Before the

Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions	)))	Docket No. 12-268

COMMENTS OF CIT GROUP INC.

CIT Group Inc. (NYSE: CIT), a leading provider of financing and advisory services to small businesses and middle market companies, has been in operation since 1908. It is a bank holding company and its principal bank subsidiary is CIT Bank, a Utah state bank. It currently has more than $33 Billion in financing and leasing assets. For almost a quarter century, what is now CIT's Communications, Media and Entertainment Group ("CME") has been a leading middle-market lender to both the broadcast and telecommunications sectors of the communications industry. CIT's portfolio presently includes television stations that are possible candidates for participation in the reverse auction, and it is likely that CIT also will be called upon to provide future debt financing, both for relocating television stations and for bidders in the forward auction. CIT believes that, in order for the incentive auctions to be financially successful, the Commission should adopt rules and procedures that assure the continuing integrity of the secured lending marketplace to broadcasters, while treating all interested parties fairly. CIT appreciates the opportunity to provide these limited comments regarding financial considerations that other commentators are not likely to raise, but which will be important elements of the incentive auction process.

These limited comments are being filed in response to the Commission's "Notice of Proposed Rulemaking" initiating the captioned proceeding.[1]

Reverse Auction Proceeds

Under extant Commission policy, no direct security interest in a broadcast license may be granted to, or held by, a private party.[2] However, the Commission, while maintaining its prohibition against direct liens on licenses, has specifically acknowledged, and unequivocally approved, the industry's traditional use of certain indirect security interests, such as stock pledges and, of particular import to this proceeding, liens on the monetary and other "proceeds" from dispositions of station assets, including licenses.[3] In addition, courts supervising broadcast bankruptcy and receivership proceedings, recognizing the regulatory validity of proceeds liens, have repeatedly afforded the holders of properly perfected proceeds liens priority over subordinate lien holders and unsecured creditors.[4] Because of these policies and decisions, the availability of proceeds loans has become a critical factor in a lender's credit analysis of a prospective broadcast borrower.

In reliance on the Commission's long-standing lien policies CIT, like almost all communications lenders, consistently obtains and perfects liens on substantially all the

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[1] *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd. 12357 (2012) ("NPRM").

[2] *In re Application of Radio KDAN, Inc.*, 11 F.C.C.2d 934, *recon. denied*, 13 R.R.2d 100 (1968), (rejected, as "untenable", any equating of a license with a chattel capable of being subjected to a direct mortgage, security interest or other lien in the ordinary commercial sense), and *In re Applications of Kirk Merkley, Receiver*, 94 F.C.C.2d 829 (1983), *recon. denied*, 56 R.R.2d 413 (1984) (distinguishing station licenses from other licensee assets, refused to allow its licenses to be subjected to direct mortgages, security interests, or liens).

[3] *In re Walter O Cheskey*, 9 FCC Rcd. 986 (Mob. Servs. Div. 1994) (first formal articulation of the Commission's permissive policy regarding "proceeds liens).

[4] *In re Tracy Broadcasting Corporation*, 696 F.3d 1051 (10^{th} Cir. 2012).

non license assets of its communications borrowers, including the proceeds of those borrowers' FCC-issued licenses. In addition, a lender's liens routinely extend to any replacement or substitute for an asset encompassed by the original lien. Accordingly, unless a broadcast loan is fully repaid at some prior time, a communications lender can lawfully expect to have its loan repaid out of the proceeds of any full or partial disposition of the borrower's assets, including the disposition of a license.

A secured lender generally can be assured it will receive an appropriate portion of any proceeds when broadcast assets, including licenses, are disposed of in a transaction between private parties. The acquirer in a private transaction can obtain "clear title" to the acquired assets only if the lender's liens are released by the lender. Therefore, a legitimate acquirer will typically make sure that its purchase price payments to the seller are properly apportioned among the seller and its creditors so as to obtain all releases and consents necessary to establish the *bona fides* of the acquisition. However, secured lenders may not have the same assurances with regard to their ability to access the Commission's payments to winning reverse auction bidders.

The NPRM proposes that "a winning reverse auction bidder that relinquishes its rights with regard to a particular television channel would relinquish *all* usage rights for that channel and retain no further rights with regard to that channel."[5] Clearly, the relinquishments anticipated by the NPRM are dispositions of broadcast assets.

As evidenced by the excerpt below, the NPRM also anticipates that the cash payments to, and for the benefit of, winning reverse auction bidders will be the equivalents of proceeds from dispositions of assets in private transactions

[5] NPRM, Para. 90 (emphasis in original).

> Broadcasters struggling financially and interested in exiting the business entirely, but unable to find a buyer for their facilities, may be able to obtain compensation in an amount acceptable to them by participating in the reverse auction... Broadcasters that wish to remain in the business also have an opportunity to strengthen their finances through the cash infusion resulting from a winning reverse auction bid to channel share or to move from a UHF to a VHF channel.[6]

What is not made expressly clear by the NPRM is whether, and how, the Commission intends that creditors holding proceeds liens will have the right to have Commission payments to winning reverse auction bidders treated in the same manner as proceeds from private transactions. A complicating factor is that anticipated payments from the Commission, a governmental entity, may be difficult for creditors to garnish or attach in the same manner as payments from private parties.

For the Commission to expressly address these lender concerns would be very helpful to the integrity of the broadcast communications finance process, which relies, in large part, upon the Commission's long-standing policy permitting proceeds loans.

At a minimum, the Commission should unequivocally acknowledge that its payments to winning reverse auction bidders will be functional equivalents of proceeds derived from transactions among private parties. The Commission should not allow to stand any implication that relinquishing licensees have some right to shelter auction proceeds from the claims of their creditors that is greater than their rights with regard to the proceeds of a commercial transaction between private parties.

The Commission can also honor its payees' instructions specifying how, and to what accounts, payments are to be directed. CIT recommends that the Commission adopt payment procedures that could obviate the need for secured creditors to seek judicial remedies.

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[6] NPRM, at Para. 16 (citations omitted).

For example, the Commission, by permitting winning reverse auction bidders to irrevocably direct payments to accounts established through agreements with secured creditors,[7] can provide the relinquishing broadcasters and the financial community with a mechanism by which they can be mutually assured that each will ultimately receive the monies to which they are entitled out of Commission payments due relinquishing broadcasters. In order for such arrangements to be most effective, the Commission should also establish a "deadline" (e.g., fifteen days in advance of the payment due date) by which the relinquishing broadcaster must deliver such payment directions to the Commission.

Relocation Costs and Operating Expenses

CIT anticipates being called upon to finance relocation costs and transitional operating expenses for relocating stations. Its determination as to whether, and to what extent, it will assist broadcasters in meeting such costs and expenses will depend, in large part, on the manner in which the Commission decides to pay allowable relocation costs.

The Spectrum Act (a) requires the Commission to make all relocation payments within three years after the completion of the incentive auctions, and (b) limits the Commission's relocation payments to a total of $1.75 billion. Recognizing those statutory parameters as the only present limitations on the Commission's ability to pay relocation costs, the NPRM seeks guidance as to what procedures should be adopted regarding relocation costs.

[7] The identity and legitimacy of a broadcaster's secured creditors can be ascertained from Commission records. Section 73.3613 of the Commission's Rules (47 CFR § 73.3613) requires that all agreements creating security interests in a licensee's assets be filed with the Commission within 30 days of their execution.

CIT submits that certainty as to, at least, the minimum amount each relocating station will receive should be a critical element of any payment program. When only a sum certain pool of money is available for distribution among several claimants, it is important for everyone to know they will get some specific portion of those funds, even if everyone will not get the same amount in the end. Accordingly, the Commission should issue simultaneous minimum payment commitments to every qualified and timely filed applicant for such funding. That way, the Commission can guarantee that everyone will get something before the pool is depleted.[8]

CIT also suggests that the Commission deliver the guaranteed minimum amounts to each relocating station at the earliest possible time. By doing so, the Commission will obviate any need for a relocating station to go out-of-pocket or obtain financing to cover all of its relocation costs.[9]

In the event the Commission decides it will not provide relocating stations with advance funding of relocation costs, it is likely that many, if not most, of those stations will need to obtain third-party financing of those costs. In order to maximize the likelihood that stations will be able to obtain such financing, the Commission should (a) guarantee the ultimate availability of a specific minimum amount for reimbursement of costs, and (b) allow a station to assign that amount to a party providing relocation financing.

Assignments and Transfers

[8] The Commission should not issue initial minimum guarantees on a "first-come first-served" basis. However, such a priority may be applied appropriately to requests for reimbursements of actually incurred costs in excess of an initial minimum guaranteed amount.

[9] Relocating stations already know they will need to provide or obtain funding to cover relocation costs not eligible for payment by the Commission (e.g., lost revenues).

CIT believes the entire incentive auction, repacking and relocation process will be facilitated if the Commission allows television stations, and their subsequent rights arising out of the incentive auction process, to be assigned or transferred throughout the process, subject only to the requirements of Section 310 of the Communications Act (47 U.S.C. § 310). Doing so will allow the marketplace to freely facilitate the efficient implementation of the incentive auctions program. Of course, approved assignees and transferees would accede to those rights and duties then applicable to the involved station.

Conclusion

CIT believes that Commission consideration and accommodation of the foregoing limited comments will facilitate the full implementation of the Commission's incentive auctions and repacking programs by assuring the financial services industry that the integrity of the Commission's lien policies remains intact.

Respectfully submitted,

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January 25, 2013